

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:92CR106
)	
v.)	
)	
FRANK SKORNIAK,)	MEMORANDUM OPINION
)	
Defendant.)	
)	

This matter is before the Court on the defendant's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (Filing No. [634](#)). For the following reasons, the motion will be denied.

This is the second motion the defendant has filed pursuant to 28 U.S.C. § 2255. His first § 2255 motion (Filing No. 516), filed on November 7, 1996, was denied by the Court on February 26, 1997 (see Filing Nos. 525 and 526).

The defendant's current § 2255 motion constitutes a "second or successive motion" within the meaning of 28 U.S.C. § 2255. See 28 U.S.C. § 2255(h); see generally *Vasquez v. Parrott*, 318 F.3d 387 (2d Cir. 2003); *Chadwick v. Graves*, 110 F.Supp.2d 1110, 1115 (N.D. Ia. 2000). A petitioner seeking to file a second or successive § 2255 motion challenging a conviction or sentence must first obtain circuit court certification. 28 U.S.C. § 2255(h); *United States v. Lambros*, 404 F.3d 1034, 1036 (8th Cir. 2005); *Hill v. Morrison*, 349 F.3d 1089, 1090 (8th Cir. 2003) ("Before a trial court may consider a second or successive § 2255 motion . . . a petitioner must obtain

permission from the court of appeals."). Because the defendant has not received approval from the United States Court of Appeals for the Eighth Circuit to file a second or successive § 2255 motion, this Court lacks jurisdiction over his claims. *Burton v. Stewart*, 549 U.S. 147, 152 (2007) ("[B]ecause the . . . petition is a 'second or successive' petition that Burton did not seek or obtain authorization to file in the District Court, the District Court never had jurisdiction to consider it in the first place."). Lacking jurisdiction, this Court will deny the defendant's motion. A separate order will be entered in accordance with this memorandum opinion.

DATED this 18th day of March, 2009.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court